

**US District Court Criminal Docket**

U.S. District - California Northern  
(San Francisco)

**3:13cr820**

**USA v. Huang**

**This case was retrieved from the court on Thursday, February 26, 2015**

Date Filed: **12/20/2013** Class Code: **CLOSED**  
Other Docket: **None** Closed: **yes**

**Defendants**

**Name**

Brandon Huang(1)  
aka: "JimmyCow"  
[Term: 06/10/2014]

**Attorneys**

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**Charges**

Complaints: none

Pending: 18:1029(a)(3) - Possession of Unauthorized  
Access Devices(1)

18:1029(a)(4) - Possession of Device-Making  
Equipment(2)

**Offense Level (Opening): Felony**

**Disposition**

3 yrs probation, with conditions, \$1000 fine, \$200 special  
assessment

3 yrs probation, with conditions, \$1000 fine, \$200 special  
assessment

Terminated: none

Case Assigned to: Honorable Richard Seeborg

**U. S. Attorneys**

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Date	#	Proceeding Text
12/20/2013	1	INFORMATION as to Brandon Huang (1) count(s) 1, 2. (Attachments: # 1 Criminal Cover Sheet) (mjj2S, COURT STAFF) (Filed on 12/20/2013) (Entered: 12/26/2013)
12/20/2013		CASE DESIGNATED for Electronic Filing. (mjj2S, COURT STAFF) (Filed on 12/20/2013) (Entered: 12/26/2013)
01/02/2014	2	STIPULATION WITH PROPOSED ORDER SETTING CHANGE OF PLEA HEARING JANUARY 28, 2014. filed by USA. (Kane, Michelle) (Filed on 1/2/2014) (Entered: 01/02/2014)
01/02/2014	3	STIPULATION AND ORDER SETTING CHANGE OF PLEA HEARING. Change of Plea Hearing set for 1/28/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Signed by Judge Hon. Richard Seeborg on 1/2/14. (cl, COURT STAFF) (Filed on 1/2/2014) (Entered: 01/02/2014)
01/06/2014	4	Letter from AUSA Michelle J. Kane as to Brandon Huang (Kane, Michelle) (Filed on 1/6/2014) (Entered: 01/06/2014)
01/06/2014		Set/Reset Hearing Arraignment set for 1/28/2014 09:30 AM in Courtroom E, 15th Floor, San Francisco before Magistrate Judge Elizabeth D. Laporte. Initial Appearance set for 1/28/2014 09:30 AM in Courtroom E, 15th Floor, San Francisco before Magistrate Judge Elizabeth D. Laporte. (mjj2S, COURT STAFF) (Filed on 1/6/2014) (Entered: 01/07/2014)
01/22/2014	5	CLERKS NOTICE CONTINUING CHANGE OF PLEA. Change of Plea Hearing previously set for 1/28/14 has been rescheduled to 2/4/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. This is a text only entry. There is no document associated with this notice. (cl, COURT STAFF) (Filed on 1/22/2014) (Entered: 01/22/2014)
01/22/2014		Set/Reset Hearing re 5 Clerks Notice, Arraignment set for 2/4/2014 09:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. Initial Appearance set for 2/4/2014 09:30 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. (rmm2S, COURT STAFF) (Filed on 1/22/2014) (Entered: 01/22/2014)
02/04/2014	6	Minute Entry for proceedings held before Judge Magistrate Judge Maria-Elena James:Initial Appearance as to Brandon Huang held on 2/4/2014, Added attorney Ginny Harjot Kaur Walia for Brandon Huang. Arraignment as to Brandon Huang (1) Count 1,2 held on 2/4/2014 ; not guilty plea entered. (Recording #FTR 10:06-10:09.) (rhw, COURT STAFF) (Filed on 2/4/2014) (Entered: 02/04/2014)
02/04/2014	7	PLEA AGREEMENT as to Brandon Huang (cl, COURT STAFF) (Filed on 2/4/2014) (Entered: 02/04/2014)
02/04/2014	8	Minute Entry for proceedings held before Judge Hon. Richard Seeborg:Change of Plea Hearing as to Brandon Huang held on 2/4/2014, Plea entered by Brandon Huang (1) Guilty Count 1,2. Sentencing set for 5/13/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Court Reporter Julie Ralston.) (rhw, COURT STAFF) (Filed on 2/4/2014) (Entered: 02/05/2014)
04/24/2014	9	STIPULATION WITH PROPOSED ORDER to continue sentencing date. (Walia, Ginny) (Filed on 4/24/2014) (Entered: 04/24/2014)
04/24/2014	10	STIPULATION AND ORDER TO CONTINUE SENTENCING HEARING. Sentencing previously set for 5/13/14 has been rescheduled to 6/10/2014 02:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg.Signed by Judge Hon. Richard Seeborg on 4/24/14. (cl, COURT STAFF) (Filed on 4/24/2014) (Entered: 04/24/2014)
06/03/2014	12	SENTENCING MEMORANDUM by Brandon Huang (Walia, Ginny) (Filed on 6/3/2014) (Entered: 06/03/2014)
06/03/2014	13	SENTENCING MEMORANDUM by USA as to Brandon Huang (Kane, Michelle) (Filed on 6/3/2014) (Entered: 06/03/2014)
06/10/2014	16	Minute Entry for proceedings held before Judge Hon. Richard Seeborg:Sentencing held on 6/10/2014 for Brandon Huang (1), Count(s) 1, 2: 3 yrs probation, with conditions, \$1000 fine, \$200 special assessment. (Court Reporter James Pence.) (rhw, COURT STAFF) (Filed on 6/10/2014) (Entered: 06/11/2014)
06/11/2014	14	JUDGMENT in a Criminal Case as to Brandon Huang. Signed by Judge Hon. Richard Seeborg on 6/11/14. (cl, COURT STAFF) (Filed on 6/11/2014) (Entered: 06/11/2014)
06/11/2014	15	Sealing Order - General Order 54 as to Brandon Huang. Signed by Judge Hon. Richard Seeborg on 6/11/14. (cl, COURT STAFF) (Filed on 6/11/2014) (Entered: 06/11/2014)
06/12/2014	17	AMENDED JUDGMENT in a Criminal Case as to Brandon Huang. Signed by Judge Hon. Richard Seeborg on 6/12/14. (cl, COURT STAFF) (Filed on 6/12/2014) (Entered: 06/12/2014)
06/23/2014	18	PAYMENT RECORD CARD : payment of Special Assessment in the amount of \$200.00 paid on 6/11/14 on behalf of Brandon Huang (rhw, COURT STAFF) (Filed on 6/23/2014) (Entered: 06/23/2014)

08/05/2014	19	MOTION for Forfeiture of Property (Application of the United States for a Preliminary Order of Forfeiture) by USA as to Brandon Huang. (Attachments: # 1 Proposed Order)(Countryman, David) (Filed on 8/5/2014) (Entered: 08/05/2014)
08/05/2014	20	ORDER re 19 Motion for Forfeiture of Property as to Brandon Huang (1). Signed by Judge Hon. Richard Seeborg on 8/5/14. (cl, COURT STAFF) (Entered: 08/05/2014)
09/05/2014	21	Certificate of Service by USA as to Brandon Huang (Declaration of Publication) (Countryman, David) (Filed on 9/5/2014) (Entered: 09/05/2014)
10/06/2014	22	MOTION for Forfeiture of Property (Application of the United States for a Final Order of Forfeiture) by USA as to Brandon Huang. (Attachments: # 1 Proposed Order)(Countryman, David) (Filed on 10/6/2014) (Entered: 10/06/2014)
10/06/2014	23	ORDER granting 22 Motion for Forfeiture of Property as to Brandon Huang (1). Signed by Judge Hon. Richard Seeborg on 10/6/14. (cl, COURT STAFF) (Entered: 10/06/2014)

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# UNITED STATES DISTRICT COURT

## Northern District of California

UNITED STATES OF AMERICA

v.

Brandon Huang,  
a/k/a "JimmyCow"

) AMENDED JUDGMENT IN A CRIMINAL CASE

)  
 ) USDC Case Number: CR-13-00820-001 RS  
 ) BOP Case Number: DCAN313CR00820-001  
 ) USM Number: 19476-111  
 ) Defendant's Attorney: Ginny H. K. Walia

Date of Original Judgment: 6/11/2014  
 (or Date of Last Amended Judgment)

- |  |   |
|--|---|
| <input type="checkbox"/> Correction of Sentence on Remand (18 U.S.C. 3742(f)(1))<br><input type="checkbox"/> Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))<br><input type="checkbox"/> Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))<br><input type="checkbox"/> Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)<br><input checked="" type="checkbox"/> Other: <u>Modification to Include Order of Forfeiture</u> | <input type="checkbox"/> Modification of Supervision Conditions (18 U.S.C. §§<br><input type="checkbox"/> Modification of Imposed Term of Imprisonment for Extraordinary and<br><input type="checkbox"/> Modification of Imposed Term of Imprisonment for Retroactive<br><input type="checkbox"/> Direct Motion to District Court Pursuant<br><input type="checkbox"/> Modification of Restitution Order (18 U.S.C. § 3664) |
|--|---|

**THE DEFENDANT:**

- ☒ pleaded guilty to count(s): One and Two of the Information  
☐ pleaded nolo contendere to count(s): \_\_\_\_\_ which was accepted by the court.  
☐ was found guilty on count(s): \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1029(a)(3)	Possession of Unauthorized Access Devices	6/26/2012	1
18 U.S.C. § 1029(a)(4)	Possession of Device-Making Equipment	6/26/2012	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s): \_\_\_\_\_  
☐ Count(s) \_\_\_\_\_ is/are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/10/2014

Date of Imposition of Judgment

Signature of Judge

The Honorable Richard Seeborg  
United States District Judge

Name &amp; Title of Judge

Date

6/12/14

DEFENDANT: Brandon Huang

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CASE NUMBER: CR-13-00820-001 RS

**PROBATION**

The defendant is hereby sentenced to probation for a term of: three years. This term consists of terms of three years on each of Counts One and Two, all such terms to run concurrently.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

**STANDARD CONDITIONS OF SUPERVISION**

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) The defendant shall support his or her dependents and meet other family responsibilities;
- 5) The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall perform 100 hours of community service as directed by the probation officer.
2. The defendant shall pay any special assessment that is imposed by this judgment and that remains unpaid at the commencement of the term of probation.
3. The defendant shall provide the probation officer with access to any financial information, including tax returns, and shall authorize the probation officer to conduct credit checks and obtain copies of income tax returns.
4. The defendant shall participate in vocational training as directed by the Probation Officer.
5. The defendant shall submit his person, residence, office, vehicle, or any other property under his control to a search. Such a search shall be conducted by a United States Probation Officer, or any other federal, state, or local law enforcement officer at any time with or without suspicion. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.
6. The defendant shall cooperate in the collection of DNA as directed by the probation officer.
7. The defendant shall not own or possess any firearms, ammunition, destructive devices, or other dangerous weapons.

AO 245C (Rev. AO 09/11-CAN 11/13) Amended Judgment in Criminal Case

**DEFENDANT:** Brandon Huang

CASE NUMBER: CR-13-00820-001 RS

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## CRIMINAL MONETARY PENALTIES

**The defendant must pay the total criminal monetary penalties under the schedule of payments.**

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 200.00	\$ 1,000.00	None

- ☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
<b>TOTALS</b>	\$ 0.00	\$ 0.00	

- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the fine/restitution.
- ☐ the interest requirement is waived for the fine/restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.



DEFENDANT: Brandon Huang

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CASE NUMBER: CR-13-00820-001 RS

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows\*:

- A ☒ Lump sum payment of \$1,200.00 due immediately, balance due  
☐ not later than \_\_\_\_\_, or  
☒ in accordance with ☐ C, ☐ D, or ☐ E, and/or ☒ F below); or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:  
**Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s): \_\_\_\_\_
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
- a) One black Apevia desktop computer
  - b) Twenty white, blank cards
  - c) Fifteen miscellaneous debit and gift cards
  - d) One Epson Printer
  - e) One white iPhone model no. A1303

\* Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



DEFENDANT: Brandon Huang

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- f) One white iPhone model no. A1349
- g) Two envelopes labeled "Jimmy Cow" containing blank cards
- h) One black MSR605 card reader-writer-encoder
- i) Miscellaneous Documents, including user names and passwords
- j) Two PVC card cutters
- k) One Sony Vaio laptop computer, serial no. C100DK7B

☐ The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect the defendant's responsibility for the full amount of the restitution ordered.**

MELINDA HAAG (CABN 132612)  
United States Attorney

J. DOUGLAS WILSON (DCBN 412811)  
Chief, Criminal Division

MICHELLE J. KANE (CABN 210579)  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	) NO. CR 13-00820 RS
Plaintiff,	) UNITED STATES' SENTENCING
v.	) MEMORANDUM
BRANDON HUANG,	) Date: June 10, 2014
Defendant.	) Time: 2:30 p.m.
	) Courtroom: No. 3, 17th Floor

Pursuant to Criminal Local Rule 32-5(b), the United States respectfully submits its sentencing memorandum concerning defendant Brandon Huang. Defendant pleaded guilty to one count of possession of fifteen or more unauthorized access devices (18 U.S.C. § 1029(a)(3)) and one count of possession of device-making equipment (18 U.S.C. § 1029(a)(4)), pursuant to a written Plea Agreement. The Court accepted the Agreement, which was entered pursuant to Fed. R. Crim. P. 11(c)(1)(A) and (B).

Sentencing in this matter is scheduled to take place on June 10, 2014, at 2:30 p.m. The government submits this memorandum in order to discuss the applicable Sentencing Guidelines ("Guidelines") calculations and to advise the Court of its sentencing recommendation, taking into account the other sentencing factors in 18 U.S.C. § 3553(a).

CR 13-00820 RS  
GOVT SENTENCING MEMO.

1 The government recommends that, consistent with the Plea Agreement and the Guidelines, the  
2 Court impose a sentence of three years of probation with 100 hours of community service, a fine of  
3 \$1,000, forfeiture of the items listed at Paragraph 11 of the Plea Agreement, and a \$200 special  
4 assessment.

### 5 BACKGROUND

6 On February 4, 2014, defendant waived his right to a grand jury indictment and pleaded guilty to  
7 both counts of an Information. In the written Plea Agreement, he admitted that, from August 2010  
8 through June 2012, he was a member of the "carding" forum, [www.carderprofit.cc](http://www.carderprofit.cc). "Carding" refers to  
9 the trade in compromised or stolen credit card numbers and associated information. The site enabled  
10 users to discuss various topics related to carding and to buy, sell, and exchange goods and services  
11 related to carding, among other things. Access to [www.carderprofit.cc](http://www.carderprofit.cc) was limited to registered  
12 members and required a username and password to gain entry. Defendant admitted that his username on  
13 [www.carderprofit.cc](http://www.carderprofit.cc) was "JimmyCow," which he registered with the e-mail address  
14 "fandangobuyer@yahoo.com."

15 Defendant admitted that he used his account on [www.carderprofit.cc](http://www.carderprofit.cc) to sell credit card account  
16 information that he knew was unauthorized and belonged to other people.<sup>1</sup> He obtained the credit card  
17 account information from other online carding websites. The information defendant admitted selling  
18 included account numbers, verification codes, expiration dates, names, addresses, and phone numbers.  
19 On or about June 26, 2012, he possessed at least fifteen such unauthorized credit card account records.  
20 Defendant admitted that he purchased a magnetic stripe reader-writer-encoder, which allowed him to  
21 encode the unauthorized credit card account information on to blank cards for my own use. Defendant  
22 possessed the equipment on or about June 26, 2012.

23 Defendant admitted that he accepted payment for the credit card account information using the  
24 digital currency "Liberty Reserve." Between August 2010 and the end of June 2012, he earned  
25 approximately \$9,000 in Liberty Reserve dollars, which equates to \$9,000 U.S. dollars, selling  
26 unauthorized credit card numbers.

27 \_\_\_\_\_  
28 <sup>1</sup> Defendant also admitted to using [www.carderprofit.cc](http://www.carderprofit.cc) to discuss and advertise false  
identification documents.

**PLEA AGREEMENT AND SENTENCING GUIDELINES CALCULATION**

The parties entered into a plea agreement that included the following calculation:

	U.S.S.G. Section	Level/Points
Base offense level: (18 U.S.C. § 1029(a)(4))	2B1.1(a)(2)	6
Specific offense characteristics: Offense involved possession or use of device-making equipment and production of unauthorized access devices	2B1.1(b)(2)(A)(i) and (B)(i)	+2
Adjusted offense level		8
Base offense level: (18 U.S.C. § 1029(a)(3))	2B1.1(a)(2)	6
Specific offense characteristics: Loss amount more than \$5,000	2B1.1(b)(1)	+2
Offense involved possession or use of device-making equipment and production of unauthorized access devices	2B1.1(b)(2)(A)(i) and (B)(i)	+2
Adjusted offense level		10
Offense level after grouping	3D1.1, 3D1.2(d)	10
Acceptance of responsibility: If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a two-level reduction for acceptance of responsibility, provided that I forthrightly admit my guilt, cooperate with the Court and the Probation Office in any presentence investigation ordered by the Court, and continue to manifest an acceptance of responsibility through and including the time of sentencing.	3E1.1	-2
Total offense level		8

The defendant also agreed to forfeit a list of items that the FBI seized during the execution of a search warrant at defendant's home. The parties had no agreement regarding defendant's criminal history. The PSR concluded that defendant is in Criminal History Category I. (PSR ¶ 44). The government has no objection to that determination. As discussed below, the PSR contains a different Guidelines calculation than the plea agreement based on a significantly higher intended loss. (PSR ¶ 32).

1 Defendant's Criminal History Category and the offense level in the Plea Agreement result in a  
2 Guidelines range of 0-6 months in Zone A. The calculations in the PSR result in a Guidelines range of  
3 46-57 months in Zone D.

#### 4 GOVERNMENT'S SENTENCING RECOMMENDATIONS

##### 5 A. Guidelines Offense Level – Loss Amount

6 In accordance with the Plea Agreement, the government recommends a sentence of three years  
7 of probation, which satisfies the requirements of the Guidelines. *See* U.S.S.G. § 5C1.1(a), (b). Because  
8 the charged offenses correspond to U.S.S.G. § 2B1.1, the 0-6 month range in the Plea Agreement is  
9 based largely on the parties' reasonable estimate of the loss resulting from defendant's conduct. The  
10 parties used defendant's gain, approximately \$9,000, as a substitute for loss, because defendant's trade  
11 in stolen credit card numbers undoubtedly resulted in a loss, but in this case, it could not be reasonably  
12 determined. *See* U.S.S.G. § 2B1.1, n. 3(B).

13 As noted in the PSR, defendant had 8,899 unauthorized credit card records on his computer, in  
14 addition to other account records. (PSR § 20). These records meet the definition of "access device" in 18  
15 U.S.C. § 1029(e)(1). The government found no evidence, however, that defendant used the unauthorized  
16 access devices himself (with the exception of one purchase of less than \$50, discussed below) or  
17 obtained them through his own hacking of businesses or individuals. Instead, the evidence on  
18 defendant's computer was consistent with the communications defendant made through the  
19 [www.carderprofit.cc](http://www.carderprofit.cc) website – he was reselling access devices he had purchased on other carding sites.  
20 Defendant sold the access devices in small amounts (PSR § 22), in contrast to the "dumps" of thousands  
21 or even millions of records that often arise in government investigations of carding forums.

22 With regard to the access device-making equipment, the government also has no evidence that  
23 defendant used the equipment to make significant numbers of counterfeit credit cards. Although  
24 defendant possessed a magnetic stripe reader-writer-encoder and blank cardstock, it appears that  
25 defendant was able to successfully encode only one card, which he used to purchase a "light saber" toy  
26 for less than \$50. Given these unique circumstances, the \$500 per access device intended loss of  
27 U.S.S.G. § 2B1.1 n.3(F)(1), which would result in a loss amount over \$4.4 million, is not a reasonable  
28

1 estimate of the actual or intended loss in this case. The government therefore stands by the Guidelines  
2 offense level in the Plea Agreement and accordingly recommends a sentence of three years of probation.  
3 The government also recommends that defendant complete 100 hours of community service as a  
4 condition of his probation. This condition is appropriate because defendant works only part time and is  
5 not attending school. (PSR ¶¶ 57-59).

6 **B. Fine**

7 Pursuant to the Guidelines calculation in the Plea Agreement, defendant is subject to a fine of  
8 \$1,000-10,000. The PSR puts the defendant in the fine range of \$10,000-\$100,000 but concludes that  
9 defendant has no ability to pay a fine. (PSR ¶ 61). The PSR states, however, that defendant has verified  
10 part time employment. (PSR ¶ 59). On an appropriate payment plan, defendant should be able to pay a  
11 low-end fine of \$1,000. This is particularly true given that there will likely be no restitution award.

12 **C. Restitution**

13 Although the parties have agreed that there was a pecuniary loss in this case, the government has  
14 been unable to identify any victims for purposes of restitution. *See* 18 U.S.C. § 3663. Therefore, the  
15 government agrees with the recommendation of the PSR that the Court not award any restitution.

16 **D. Sentencing Considerations**

17 The government submits that its recommended sentence will be sufficient, but not greater than  
18 necessary, to address the factors set forth in Section 3553(a). As established in *United States v. Booker*,  
19 543 U.S. 220, 220 (2005), the Sentencing Guidelines are no longer mandatory, only advisory.  
20 Nonetheless, sentencing proceedings are to begin by determining the applicable Guidelines range. *See*  
21 *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc). In this sense, the guidelines are “the  
22 ‘starting point and the initial benchmark,’” *Kimbrough v. United States*, 552 U.S. 85, 108 (2007)  
23 (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)), and “are to be kept in mind throughout the  
24 process.” *Gall*, 552 U.S. at 50 n.6.

25 Sentencing courts must consider, in addition to the Guidelines, the factors set forth in 18 U.S.C.  
26 § 3553(a). These factors include the need for the sentence to reflect the seriousness of the offense and  
27 the history of the defendant, afford adequate deterrence, protect the public from further criminal conduct  
28

1 by the defendant, and avoid sentencing disparities among similarly situated defendants. Because of that,  
2 it is “procedural error” if the district court fails to calculate – or calculates incorrectly – the applicable  
3 Guidelines range; treats the guidelines as mandatory instead of advisory; fails to consider the § 3553(a)  
4 factors; chooses a sentence based on clearly erroneous facts; or fails adequately to explain the sentence  
5 selected, including any deviation from the Guidelines range. *See Carty*, 520 F.3d at 993. To determine  
6 the substantive reasonableness of a sentence, courts examine “the totality of circumstances.” *Id.* If a  
7 sentence is within the Guidelines range, “it is probable that it is reasonable.” *Rita v. United States*, 551  
8 U.S. 338, 351 (2007).

9 **1. Nature and Circumstances of the Offense and the History and Characteristics of**  
10 **the Defendant.**

11 Defendant began his foray into online credit card fraud at a young age. His interview and the  
12 evidence collected by the FBI demonstrate that by the time of his arrest at age 19 he was dabbling in  
13 various facets of “carding.” In addition to the charged offenses, defendant had unsuccessfully tried to  
14 steal credit card information himself, had discussed false identification documents, and had explored  
15 various online scams. (PSR ¶ 21). Defendant’s reselling unauthorized access devices was, however, his  
16 only demonstrably profitable carding activity at that point.

17 Immediately upon being confronted by the FBI agents executing the search warrant, defendant  
18 agreed to speak with the agents and gave truthful information regarding his activities. He assisted the  
19 agents in searching his computers and provided access to his online accounts. Defendant has minimal  
20 criminal history and has not gotten into further trouble since the June 2012 search warrant. He agreed to  
21 forfeit the equipment he purchased with the proceeds of the offense. Defendant waived his right to a  
22 grand jury indictment, saving the government a significant expenditure of time and resources. Taking all  
23 these facts into account, the government’s recommendation for a sentence of probation adequately  
24 accounts for the requirements of 18 U.S.C. § 3553(a)(1).

25 //  
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27  
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Carding is a serious offense that creates enormous losses for individuals and companies.

## CONCLUSION

Dated: June 3, 2014

Respectfully submitted,

/s/

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